

Chapter 7

DISBURSEMENTS FOR PERSONAL SERVICES OUTSIDE THE CLASSIFIED SERVICE

7-1 DISBURSEMENTS FOR PERSONAL SERVICES OUTSIDE THE CLASSIFIED SERVICE

sonnel director may disapprove any further disbursements by written order. If an appointing authority fails or refuses to comply with an order of the director, the director is authorized to take all appropriate action, including filing a civil action, to compel compliance with the disapproval order.

[Rule 7-1 last amended effective October 1, 2001]

7-1.1 Requirements

An appointing authority shall not make or authorize disbursements for personal services outside the classified service until the provisions of article 11, section 5, of the constitution and the civil service rules and regulations have been complied with in every particular.

7-1.2 Disapproval by State Personnel Director

If an appointing authority makes or authorizes disbursements for personal services outside the classified service in violation of article 11, section 5, of the constitution or an applicable civil service rule or regulation, the state per-

7-2 JURISDICTION

7-2.1 Civil Service Review or Approval not Required

An appointing authority is not required to seek or obtain civil service approval for any of the following disbursements outside the classified service:

- (a) **Not personal services.** Disbursements that are not for personal services.

(b) Exempt and excepted employees.

Disbursements to persons occupying positions excepted from the classified service by article 11, section 5, of the constitution, or exempted by the state personnel director under rule 1-9.2 [Exempt Positions].

(c) Mixed disbursements. Disbursements for personal services that are included with other disbursements if (1) the predominant purpose of the mixed disbursements is not for personal services and (2) the personal services are logically or practically related to the predominant purpose of the mixed disbursements.**(d) Grants.** Disbursements of grants.**(e) Federal law.** Disbursements under federal law if the use of the classified service is not an option.**(f) Intergovernmental disbursements.** Disbursements to any of the following governments or their political subdivisions:

- (1) One or more of the states of the United States.
- (2) The United States.
- (3) Canada.

(g) Intragovernmental disbursements. Disbursements to any of the following public bodies:

- (1) An agency of the executive, judicial, or legislative branch of the state of Michigan.
- (2) A political subdivision of the state of Michigan, including, but not limited to, a county, township, city, village, or district.
- (3) Any governmental body created by agreement of any two or more

counties, townships, cities, villages, or districts, as authorized by law.

(4) A nonprofit community board, agency, or corporation created under local, state, or federal law to exercise a governmental function.**(5)** A public university, public college, public community college, or other public school.**(h) Court ordered disbursements.**

Disbursements made pursuant to a court order requiring disbursements for personal services, if the court retains jurisdiction of the matter or the matter is subject to further court review.

7-2.2 Complaints

A complaint that an appointing authority has made or authorized disbursements for personal services in violation of article 11, section 5, of the constitution or a civil service rule or regulation must be filed with the state personnel director under the procedures authorized in rule 7-9 [Complaints and Investigations].

[Rule 7-2 last amended effective October 1, 2001]

7-3 STANDARDS FOR DISBURSEMENTS FOR PERSONAL SERVICES

Except as provided in rule 7-2 [Jurisdiction], an appointing authority may make or authorize disbursements for personal services outside the classified service only if the personal services meet one or more of the following standards:

(a) Standard A. The personal services are temporary, intermittent, or irregular.**(b) Standard B.** The personal services are (1) so specialized, technical, peculiar, or

unique that they are not recognized as normal to the classified service or (2) the appointing authority is unable to recruit enough qualified candidates willing to accept a classified position.

- (c) **Standard C.** The personal services involve (1) the use of equipment, materials, or facilities not reasonably available to the agency at the time and place required and (2) the estimated cost to the agency in procuring such equipment or materials and establishing the needed positions would be disproportionate to the contract cost.
- (d) **Standard D.** The personal services would be obtained at substantial savings over the proposed period of disbursements when compared with having the same personal services performed by the classified work force. The personal services do not meet this standard if, despite the savings over the proposed period of disbursements, substantial savings would not likely be realized over the long term. Savings are “substantial” if the average annual savings over the proposed period of disbursements are equal to or greater than the minimum required savings computed using the table below:

Col. 1		Col. 2
Projected Average Annual Disbursements:		Minimum Required Average Annual Savings Must Equal:
<i>From:</i>	<i>To:</i>	
\$ 1	\$ 25,000	25% of average annual cost
25,001	50,000	20% (minimum \$6,250)
50,001	100,000	15% (minimum \$10,000)
100,001	200,000	12.5% (minimum \$15,000)
200,001	500,000	10% (minimum \$25,000)
500,001	1,000,000	Minimum \$50,000
1,000,001	and above	5% of average annual cost

[Rule 7-3 last amended effective October 1, 2001]

7-4 DISBURSEMENTS TO SPECIAL PERSONAL SERVICES EMPLOYEES

An appointing authority may make disbursements for personal services to a special personal services employee under the following conditions:

- (a) **Standards.** The personal services meet Standard A or Standard B in rule 7-3.
- (b) **Procedures.** The disbursements for personal services have been approved under the request procedures in rule 7-6 or preauthorized under rule 7-7.

[Rule 7-4 last amended effective October 1, 2001]

7-5 DISBURSEMENTS TO INDEPENDENT CONTRACTORS

An appointing authority may make disbursements for personal services to an independent contractor under the following conditions:

- (a) **Standards.** The personal services meet one or more of the standards in rule 7-3.
- (b) **Procedures.** The disbursements for personal services have been approved under the request procedures in rule 7-6 or preauthorized under rule 7-7.

[Rule 7-5 last amended effective October 1, 2001]

7-6 PRIOR WRITTEN APPROVAL BY CIVIL SERVICE STAFF

7-6.1 Procedure

An appointing authority may submit to the department of civil service a request for approval to make disbursements for personal services outside the classified service. Civil service staff shall (1) receive and evaluate the request, (2) receive and evaluate information submitted by other interested parties, and (3) issue a written technical decision. The staff shall approve the request, with or without conditions, or shall deny the request.

7-6.2 Approval

Civil service approval of a request to make disbursements for personal services outside the classified service must include the following:

- (a) The maximum aggregate dollar amount the appointing authority is authorized to disburse for the requested personal services during the approved period.
- (b) The specific personal services that the appointing authority is authorized to purchase outside the classified service with approved disbursements.
- (c) The period during which the appointing authority is authorized to make approved disbursements.
- (d) Any other requirement, condition, or restriction on the disbursements necessary to ensure that the appointing authority complies with article 11, section 5, of the constitution and the civil service rules and regulations.

7-6.3 Effective Date of Staff Decision

- (a) **One interested party.** If the appointing authority is the only interested party participating in the staff review, the technical decision is effective upon its issuance, unless a later date is specified in the technical decision.

- (b) **Two or more interested parties.**

- (1) **Effective date.** If more than one interested party participates in the staff review, the technical decision is effective 14 calendar days after the date the technical decision is issued, unless a different date is specified in the technical decision or the state personnel director issues a stay.
 - (2) **Request for stay.** An interested party intending to appeal the technical decision may file a request that the state personnel director stay the effective date of the decision pending appeal. The request for a stay must be received by the director within 10 calendar days after the date the technical decision is issued. The director may stay the effective date of the technical decision pending a technical appeal if the director determines that (1) it is unlikely that the request meets any of the standards for approval and (2) a stay is in the best interest of the classified service.

7-6.4 Complaint Regarding Technical Decision

An interested party who participated at the staff review may file a technical disbursement complaint as provided in rule 8-3 [Technical Complaints]. The technical complaint must be received by the department of civil service and

all other interested parties within 14 calendar days after the date the technical disbursement decision is issued.

7-6.5 Compliance

An appointing authority shall comply with all requirements, conditions, and restrictions established in the civil service approval of a request to make or authorize disbursements for personal services outside the classified service. By way of example only, an appointing authority is prohibited from doing any of the following:

- (a) Disbursing funds in excess of the approved maximum aggregate dollar amount.
- (b) Disbursing funds for personal services other than approved personal services.
- (c) Disbursing funds for personal services performed outside the period approved for the disbursements.
- (d) Failing to comply with any requirement, condition, or restriction established in the civil service approval.

[Rule 7-6 last amended effective October 1, 2001]

7-7 PREAUTHORIZED APPROVAL

7-7.1 Publication of List

The department of civil service shall establish and publish a list of personal services deemed to meet one or more of the standards of rule 7-3 without further review.

7-7.2 Use of Preauthorized Approval

An appointing authority may make or authorize disbursements for any preauthorized personal services without submitting a request or obtaining prior written approval of the department of civil service under rule 7-6. When making or authorizing disbursements for preauthorized personal services, the appointing authority shall comply with all requirements, conditions, and restrictions established by the department of civil service for the use of the list of preauthorized personal services.

7-7.3 Reporting

As a condition of using the preauthorized list, the appointing authority shall report all disbursements for preauthorized personal services as required by statute and the civil service regulations.

7-7.4 Additions to Preauthorized List

An appointing authority seeking to add personal services to the list of preauthorized personal services may file a request with the department of civil service under the procedures authorized in rule 7-6. Civil service approval of a request to add personal services to the list of preauthorized personal services must include the following:

- (a) A description of the particular type of personal services being added to the list of preauthorized personal services.
- (b) The standard in rule 7-3 that the added personal services is deemed to satisfy.
- (c) Any other requirement, condition, or restriction on the use of the preauthorization necessary to ensure that the appointing authority complies with

article 11, section 5, of the constitution and the civil service rules and regulations.

7-7.5 Complaints or Appeals

Any complaint regarding the use of the preauthorized approval process or any disbursements for personal services made or authorized under the preauthorized approval process must be brought under the procedures authorized in rule 7-9. Any complaint regarding a technical decision to add personal services to the preauthorized list must be brought by an interested party under the technical appeal procedures in rule 8-3 [Technical Complaints].

[Rule 7-7 last amended effective October 1, 2001]

7-8 EMERGENCY DISBURSEMENTS

An appointing authority may authorize or make disbursements for personal services outside the classified service without prior civil service approval when an emergency occurs. The emergency personal services must not continue beyond 28 calendar days without approval of the department of civil service. The department may approve continuation of emergency services for an additional period not to exceed 28 calendar days.

[Rule 7-8 last amended effective October 1, 2001]

7-9 COMPLAINTS AND INVESTIGATIONS

7-9.1 Investigation by State Personnel Director

- (a) **Complaint required.** Any person who alleges that an appointing authority has made or authorized disbursements for

personal services outside the classified service in violation of article 11, section 5, of the constitution or a civil service rule or regulation must file a complaint with the state personnel director and serve a copy on the appointing authority and the state employer.

- (b) **Examples of violations.** Alleged violations for which a complaint must be filed include, but are not limited to, the following:

- (1) The appointing authority has made or authorized disbursements for personal services outside the classified service in violation of article 11, section 5, of the constitution.
- (2) The appointing authority has made or authorized disbursements for personal services outside the classified service without obtaining approval required by the civil service rules or regulations.
- (3) The appointing authority has made or authorized any of the following disbursements for personal services outside the classified service:
 - (A) Disbursements in excess of the maximum aggregate dollar amount approved by civil service.
 - (B) Disbursements for personal services other than those approved by civil service.
 - (C) Disbursements for personal services performed outside the period approved by civil service.
 - (D) Disbursements that do not comply with a requirement, condition, or restriction established in the civil service approval.

- (4) The appointing authority obtained civil service approval by fraud, material misrepresentation, or failure to disclose material facts.
- (5) The appointing authority made or authorized improper preauthorized disbursements for personal services.
- (6) The appointing authority failed to report disbursements for personal services as required by law, including the civil service rules and regulations.
- (7) The appointing authority failed to document adequately its compliance with the civil service rules and regulations.

7-9.2 Action by State Personnel Director

After reviewing the complaint, the state personnel director may act on the complaint or may appoint a person to conduct an inquiry and make a recommendation for action to the director. If the director finds that an appointing authority has made or authorized disbursements for personal services outside the classified service contrary to article 11, section 5, of the constitution or a civil service rule or regulation, the director may disapprove disbursements for personal services or take other appropriate action to ensure compliance with the constitution and the civil service rules and regulations.

7-9.3 Appeal of Director's Determination

A determination of the state personnel director under this rule 7-9 is final unless a party to the inquiry files an application for leave to appeal to the civil service commission under rule 8-7 [Appeal to Civil Service Commission] within

28 calendar days after the date the director's determination is issued.

[Rule 7-9 last amended effective October 1, 2001]

7-10 AUDIT AND ENFORCEMENT

The department of civil service shall periodically audit appointing authorities to ensure that they are complying with article 11, section 5, of the constitution and the civil service rules and regulations governing disbursements for personal services outside the classified service. If the state personnel director determines that an appointing authority has not substantially complied with article 11, section 5, of the constitution or the rules and regulations, the state personnel director may (1) require the appointing authority to file a written request and obtain prior written approval from the department of civil service for all disbursements for personal services outside the classified service and (2) take such other action as will reasonably ensure that the appointing authority complies with article 11, section 5, of the constitution and the rules and regulations in the future.

[Rule 7-10 last amended effective October 1, 2001]

7-11 CONTRACT REQUIREMENTS

Every contract by a state agency that authorizes disbursements for personal services outside the classified service must contain a provision that the state is obligated to comply with article 11, section 5, of the constitution and applicable civil service rules and regulations. The provision must also give notice that, notwithstanding any other provision of the contract to the contrary, the state personnel director is authorized to disapprove contractual disbursements for personal services if the

director determines that the contract or the disbursements violate article 11, section 5, of the constitution or applicable civil service rules and regulations. The failure of an appointing authority to require such a provision in a contract does not limit or restrict the authority of the civil service commission and the director to disapprove disbursements for personal services outside the classified service.

[Rule 7-11 last amended effective October 1, 2001]

7-12 LIMITATIONS

Approval by the department of civil service under this chapter does not relieve an appointing authority of an obligation under any other law or non-civil service rule or regulation that may apply to a contract. Approval by the department of civil service under this chapter does not constitute approval of any contract or agreement by the state of Michigan under which an appointing authority makes or authorizes approved disbursements for personal services outside the classified service.

[Rule 7-12 last amended effective October 1, 2001]

[End of Chapter 7]